Supplemental Appellant's Brief

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No. 81-349

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

CHICAGO BRIDGE & IRON COMPANY,

Appellant,

v.

CATERPILLAR TRACTOR CO., ILLINOIS DEPARTMENT OF REVENUE, *et al.*,

Appellees.

Appeal from the Supreme Court of Illinois

SUPPLEMENTAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

PAGE

Table of Contents i

Table of Authorities i

Basis for Filing Supplemental Brief 1

Argument 2

I. Due Process and Apportionment—The Lessons of *Mobil, ASARCO* and *Woolworth* 2

II. A Word About *Bass, Ratcliff* 8

III. Worldwide Combination and the Risk of Multiple Taxation 9

IV. Worldwide Combination and the Need to "Speak With One Voice" 13

V. Corporate Domicile is Immaterial 18

VI. Is Worldwide Combination Vitally Important to the States? 24

Summary 26

Conclusion 27

TABLE OF AUTHORITIES

Cases

ASARCO Inc. v. Idaho State Tax Commission, 50 U.S.L.W. 4962, 102 S. Ct. 3103, 73 L. Ed. 2d 787 (June 29, 1982), reh'g denied, 51 U.S.L.W. 3304 (Oct. 18, 1982) 2

Bass, Ratcliff & Gretton, Ltd. v. State Tax Commission, 266 U.S. 271 (1924) 8

Boston Stock Exchange v. State Tax Commission, 429 U.S. 318 (1977) 23

PAGE

Caban v. Mohammed, 441 U.S. 380 (1979) 23

Container Corporation of America v. Franchise Tax Board, No. 81-523 ..... 1, 4

Exxon Corp. v. Department of Revenue, 447 U.S. 207 (1980) 3

Hoeper v. Tax Commission, 284 U.S. 206 (1931) 7

Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434 (1979) 9, 12

Mobil Oil Corp. v. Commissioner of Taxes, 445 U.S. 425 (1980) 2, 3, 8, 12

Moorman Mfg. Co. v. Bair, 437 U.S. 267 (1978) 12

F. S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920) 22, 23

Sears, Roebuck & Co. v. County of Los Angeles, 449 U.S. 1119 (1981), aff'g Zee Toys, Inc. v. County of Los Angeles, 85 Cal. App. 3d 763 (1978) 23

Sumitomo Shoji America, Inc. v. Avagliano, 50 U.S.L.W. 4643, 102 S. Ct. 2374, 72 L. Ed. 2d 765 (June 15, 1982) 8

F. W. Woolworth Co. v. Taxation and Revenue Department, 50 U.S.L.W. 4957, 102 S. Ct. 3128, 73 L. Ed. 2d 819 (June 29, 1982), reh'g denied, 51 U.S.L.W. 3304 (Oct. 18, 1982) 2, 3, 4, 5

Zee Toys, Inc. v. County of Los Angeles, 85 Cal. App. 3d 763 (1978), aff'd sub nom. Sears, Roebuck & Co. v. County of Los Angeles, 449 U.S. 1119 (1981) 23

Legislation and Legislative Debates

Amendatory Veto of H.B. 2588 by the Governor of Illinois (Sept. 20, 1982) 2, 25

PAGE

British Parliamentary Debate, House of Commons 823-28 (April 27, 1982) 13, 14

Illinois House Bill (H.B.) 2588, 82nd Gen. Ass. (1982) 2, 24

Hearings and Governmental Correspondence

Comptroller General's Report to the Chairman of the House Committee on Ways and Means: "Key Issues Affecting State Taxation of Multijurisdictional Corporate Income Need Resolving," GAO/GGD-82-38 (July 1, 1982) 2, 9, 19

Council of State Chambers of Commerce (COST) Response to Treasury Department Questionnaire (June 10, 1982) 1, 9, 10

Letter from John E. Chapoton, Assistant Secretary of the Treasury for Tax Policy, to Senator Charles Mathias (Sept. 25, 1982) 17, 18

Treaties and Diplomatic Correspondence

Articles 3(1), 9(2) and 25 of the United States "Model" Income Tax Treaty, 46 Fed. Reg. 37,432 (July 13, 1981) 16

Note No. 83 from the British Embassy to the United States Department of State (May 18, 1982) 14

Note from the Government of Belgium, as President of the European Economic Community Governments, to the United States Department of State (June 29, 1982) 14, 15

Other Authorities

Coopers & Lybrand, Economic Impacts and Tax Alternatives Associated with Worldwide Combined Reporting for the State of Illinois (Sept. 20, 1982) 25

PAGE

G. Harley, International Division of the Income Tax Base of Multinational Enterprise (Multistate Tax Commission 1981) 15

Plaintiff's Complaint, Shell Petroleum N.V. v. Graves, No. 81-4302 (N.D. Cal. filed Nov. 4, 1981) 19, 20

Rev. Proc. 70-18, 1970-2 C.B. 493 16

Rev. Proc. 79-31, 1979-1 C.B. 599 16

J. Tussman and J. tenBroek, *The Equal Protection of the Laws*, 37 Cal. L. Rev. 341 (1949) 21

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BASIS FOR FILING SUPPLEMENTAL BRIEF

This case was argued before this Court on April 19, 1982. Subsequently, on May 3, 1982, it was restored to the calendar for reargument. On the same date, the Court noted probable jurisdiction in the case of *Container Corporation of America* v. *Franchise Tax Board*, No. 81-523, which presents the same constitutional issues, as well as a due process issue based on its peculiar facts.

On June 10, 1982, the Council of State Chambers of Commerce (COST) filed its responses to a Treasury De-

partment questionnaire regarding worldwide combined reporting (COST response). On June 29, 1982, the Court rendered its decisions in *ASARCO Inc.* v. *Idaho State Tax Commission*, 50 U.S.L.W. 4962, *reh'g denied*, 50 U.S.L.W. 3304 (Oct. 18, 1982), and *F. W. Woolworth Co.* v. *Taxation and Revenue Department*, 50 U.S.L.W. 4957, *reh'g denied*, 51 U.S.L.W. 3304 (Oct. 18, 1982). On July 1, 1982, the Comptroller General issued a Report to the Chairman of the House Committee on Ways and Means entitled "Key Issues Affecting State Taxation of Multijurisdictional Corporate Income Need Resolving," GAO/GGD-82-38 (Comptroller General's Report). On September 20, 1982, the Governor of Illinois issued an amendatory veto of House Bill 2588 (H.B. 2588), suggesting that worldwide combined reporting be abolished in Illinois, but retaining combined reporting for domestic members of unitary groups. The Illinois General Assembly accepted the Governor's amendments on December 2, 1982.

Pursuant to Rule 35, this Supplemental Brief is filed prior to the time this case is called for reargument.

ARGUMENT

I.

Due Process And Apportionment—The Lessons Of *Mobil*, *ASARCO* And *Woolworth*

The recent decisions of this Court in *ASARCO* and *Woolworth* have clarified and made explicit its holding in *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425 (1980). *Mobil* presented to the Court for the first time the question whether dividend income received by a corporation not domiciled in the taxing State was subject to apportionment and, hence, to taxation by such State. In deciding that question, the Court stated:

> [T]he linchpin of *apportionability* in the field of state income taxation is the unitary-business principle. In accord with this principle, what appellant must show, in order to establish that its dividend income is not subject to an apportioned tax in Vermont, is that the income was earned in the course of activities unrelated to the sale of petroleum products in that State. [445 U.S. at 439; emphasis supplied]

The Court explicitly noted that, absent a finding of a unitary business, "due process considerations might well preclude *apportionability.*" [445 U.S. at 442; emphasis supplied]

Shortly thereafter, in *Exxon Corp.* v. *Department of Revenue,* 447 U.S. 207 (1980), the Court quoted *Mobil* and held:

> The "linchpin of apportionability" for state income taxation of an interstate enterprise is the "unitary-business principle." . . . If a company is a unitary business, then a State may apply an apportionment formula to the taxpayer's total income in order to obtain a "rough approximation" of the corporate income that is "reasonably related to the activities conducted within the taxing State." [447 U.S. at 223]

Despite these decisions, it remained for *ASARCO* and *Woolworth* to nail down the vital interrelationship between the unitary business principle and apportionment. In each of those cases, dividends received by nondomiciliary parent corporations were held not to be subject to apportionment because the dividend-paying corporations were not engaged in a unitary business with the recipients. Due process, the Court held, requires a determination that "contributions to income [of the subsidiaries] result[ed] from functional integration, centralization of management, and economies of scale. . . . If such 'factors of profitability' arising 'from the operation of the business as a whole' exist and evidence

the operation of a unitary business, a State can gain a justification for its tax consideration of value that has no other connection with that State." [*Woolworth*, 50 U.S.L.W. at 4959] Finding an absence of "integration or unitary operation in the sense in which our cases consistently have used these terms," the Court held in *Woolworth* that "New Mexico, in taxing a portion of dividends received from such enterprises, is attempting to reach 'extraterritorial values,' *Mobil*, 445 U.S., at 442, . . . wholly unrelated to the business of the Woolworth stores in New Mexico." [*Woolworth*, 50 U.S.L.W. at 4961] Therefore, the Court concluded that inclusion of the dividends in the parent's apportionable income deprived the taxpayers of due process.

It is appropriate now to examine the holdings in these cases as they bear on the instant case and *Container Corporation of America* v. *Franchise Tax Board*, No. 81-523. Container Corporation of America contends that California erred in determining that the operations of the parent corporation and its subsidiaries constituted a unitary business. If, under the tests set forth in *ASARCO* and *Woolworth*, Container prevails on this issue, due process compels a decision in Container's favor. In the instant case, however, it is conceded by all parties that Caterpillar Tractor Co. and its subsidiaries constitute a unitary business. What, then, is the teaching of *Mobil*, *ASARCO* and *Woolworth* with respect to Caterpillar?

Chicago Bridge & Iron Company (CBI) submits that the lesson to be learned from such decisions is clear, and that it demonstrates the method for the State of Illinois to tax a proper portion of Caterpillar's (or any parent corporation's) income from a unitary business. Specifically, if a parent and its subsidiaries conduct a unitary business, all of the dividends received by the parent from such subsid-

iaries, whether incorporated in the United States or abroad, constitute income which under the principles enunciated in *Mobil* is subject to an apportioned tax by the States in which the parent does business. Like Vermont in the *Mobil* case, Illinois is entitled to tax its proportionate share of such dividend income.

Neither *Mobil* nor *Exxon*, however, constitutes authority for combined reporting. As acknowledged in the Petition for Rehearing filed by the States of New Mexico and Idaho in *ASARCO* and *Woolworth*, "the validity of the combination method has never been adjudicated by this Court." [Petition at 9] Indeed, the constitutional question presented by combined reporting is quite unrelated to that presented by apportionment.

Apportionment questions focus on whether amounts admitted to be income of the taxpayer are subject to tax by the taxing authority. Apportionment is only permissible when there is a unitary business; otherwise, apportionment results in extra-territorial taxation in violation of due process. Thus, in *ASARCO* and *Woolworth*, dividends which were part of the total income of the taxpayers were nevertheless not subject to apportionment because they were not derived from a unitary business. "New Mexico, in taxing a portion of dividends received from such enterprises, is attempting to reach 'extraterritorial values,' *Mobil*, 445 U.S., at 442, . . . wholly unrelated to the business of the Woolworth stores in New Mexico." [*Woolworth*, 50 U.S.L.W. at 4961]

Combination questions, on the other hand, focus on whether amounts can in fact be treated as the income of the taxpayer over which the taxing authority has jurisdiction. Combination is concerned, not with the *apportionability* of the taxpayer's income, but with determining the *amount* of

the taxpayer's income by means of mathematical attribution rules:

> Unlike the unitary apportionment method, the combination method disregards separate corporate form and treats a parent and those of its subsidiaries which are engaged in the same unitary business as if they were conducting a single business for *net income attribution purposes.* [Petition for Rehearing filed by States of New Mexico and Idaho at 9; emphasis supplied]

The profound differences between combination and apportionment may readily be observed. Where a parent and a subsidiary are engaged in a unitary business, apportionment permits a State to tax a portion of the dividend income received by the parent from the subsidiary. Combination, however, would permit the State to tax a portion of the entire earnings of the subsidiary by attributing them to the parent even though none of such earnings were remitted to the parent. Indeed, if the subsidiary were doing business in the taxing State, combination would permit the State to tax a portion of the entire earnings of the *parent* by attributing them to the subsidiary. No such result would be possible under the apportionment method of taxation, as the subsidiary would have received no income from its parent.

It must be remembered that the combination method advocated by California and Illinois requires no finding of sham, fraud, or lack of arm's-length dealings between corporations. Where such exist, the arm's-length method supported by CBI permits reallocation of income.

Combination applies a mechanical, mathematical formula in every case where a unitary business can be said to exist. Assume that Corporations A and B are wholly-owned subsidiaries of Corporation C, a holding company in Delaware, which exercises total control over their managements.

Both subsidiaries are engaged in the business of manufacturing and selling grits. Both have property of $100x and payroll of $100x. Corporation A does business only in Illinois; B does business only in Georgia. Grits are not especially popular in Illinois, so A's sales are only $1x, while B's sales in Georgia are $10x. There are no intercorporate transactions between A and B, and on an arm's-length basis, A barely breaks even while B earns a substantial profit. Combined reporting would require 36% of the total profit to be attributed to A and subjected to tax in Illinois. ($100x/$200x plus $100x/$200x plus $1x/$11x, divided by 3, equals 36%).

Although A is thus subject to tax on 36% of the total profits, A has no control over or equity in the earnings of B. Decisions as to how B's funds are to be employed are made by the management of C over which Illinois has no jurisdiction. This situation presents a vivid example of why this Court held in *Hoeper* v. *Tax Commission*, 284 U.S. 206 (1931), that due process does not permit the imposition of income tax on one taxpayer measured by the income of another.

If the question is viewed as one involving the rate of tax, it is clear that combination also violates equal protection. In the above example, if Corporation A earned $100,000 while Corporation B earned $1,000,000, Corporation A would be subject to tax on 36% of $1,100,000, or $396,000. The Illinois corporate income tax rate is 6.5%; thus, A would pay $25,740 in Illinois income tax. If Corporation X, which competed with A in the manufacture of grits and operated only in Illinois, but which was not a member of any corporate group, also earned $100,000 on an arm's-length basis, it would pay only $6,500 in Illinois tax, a constitutionally impermissible competitive advantage.

This Court stated in *Mobil* that whether income is directly earned by a corporation through the operation of a branch, or whether such income is derived from dividends paid by another corporation which is a part of a unitary business, "ought not to affect the *apportionability* of income the parent *receives*." [445 U.S. at 441; emphasis supplied] The key is *receipt*; income of a unitary business which has been received by a taxpayer-parent is subject to *apportionment* even though received in the form of dividends from a foreign corporation. The constitutionality of apportionment where a unitary business exists can no longer be questioned; the unconstitutionality of combination should be equally certain.

II.

A Word About *Bass, Ratcliff*

CBI has previously dealt with the fallacious assertion that a decision outlawing worldwide combined reporting would require the overruling of *Bass, Ratcliff & Gretton, Ltd.* v. *State Tax Commission*, 266 U.S. 271 (1924). See CBI's Reply Brief at 9-12; oral argument, Tr. at 44-45. The distinction between branch offices and subsidiaries is of vital significance with respect to the requirements of both due process and the commerce clause. It has most recently been recognized by this Court in *Sumitomo Shoji America, Inc.* v. *Avagliano*, 50 U.S.L.W. 4643 (June 15, 1982), where this Court held that branch offices and subsidiaries may have different rights under treaties. To hold that combined reporting violates due process or that the foreign commerce clause precludes the imposition of worldwide combined reporting on multinational corporate groups simply does not require this Court to hold that formulary apportionment, as utilized in *Bass, Ratcliff*, may not constitutionally be applied to a single multinational corporation operating through branch offices.

III.

Worldwide Combination And The Risk Of Multiple Taxation

In *Japan Line, Ltd.* v. *County of Los Angeles,* 441 U.S. 434 (1979), this Court struck down a fairly apportioned tax which would have been constitutional had it affected only interstate commerce. The Court stated that two additional considerations come into play when foreign commerce is concerned. Of these two, the Court said, "The first is the enhanced risk of multiple taxation." [441 U.S. at 446] That worldwide combined reporting inevitably causes multiple taxation is discussed at length in CBI's Brief at 29-44, and its Reply Brief at 15-18. That discussion will not be repeated here. However, it should be noted that the recent Comptroller General's Report, which carefully lists the arguments on both sides of the worldwide combined reporting question without taking a position as to which are most persuasive, contains one factual finding of great importance:

> [A]vailable evidence from independent researchers does indicate that property values and wages, even after adjustments for productivity differences, may be substantially lower in many foreign countries than in the United States. [Comptroller General's Report at 37]

That multiple taxation results from a State's use of a formula which fails to take into account such lower costs of conducting business abroad is demonstrated in CBI's Brief at 40-44.

In addition, among the questions submitted by the Treasury Department to COST was one requesting examples of specific instances where the income of a U.S. corporation (or its affiliates) was subjected to double taxation by a State's use of worldwide combined reporting. COST responded at length. [COST response, answers to questions # 3 and # 6] One example will suffice: In 1974, Oregon,

employing worldwide combined reporting, determined that 67.9% of the income which The Coca-Cola Company and subsidiaries earned in Germany (according to the allocation methods provided in the U.S. treaty with Germany) should be apportioned to U.S. locations. Since Germany does not accept worldwide combined reporting, this determination, if followed by all of the States to which such income was apportioned, would subject 67.9% of Coca-Cola's German income to double taxation. [COST response at 11] The COST response states that this and other examples "are representative of the experiences of its multinational member companies which are or have been faced with State tax administration on a worldwide combination basis." [COST response at 13]

It is significant that several of the *amici* which filed briefs in support of worldwide combined reporting in the *Container* case implicitly acknowledge that multiple taxation results therefrom, but they repudiate the holding of *Japan Line*. The National Governors' Association and the State of Hawaii argue:

> Thus, if any multiple taxation has occurred, it may be the result of foreign countries asserting jurisdiction to tax income which was earned in the State of California. One or more of those foreign countries may have taxed income earned in California even though multiple taxation resulted. . . . If the present case is an instance of a foreign country taxing income earned in California and California taxing that same income, should California give way? We think not. . . .
>
> It may be that any multiple taxation that occurred as a result of California's use of the "unitary apportionment method" and a country's use of the "arm's length method" resulted either from clashes between the two systems or definitional differences. However, so

long as the overlap is small, it represents a *de minimis* situation. . . .

• • •

In summary, if multiple taxation has occurred, it may be the result either of foreign governments taxing income earned in California or of California and foreign countries having conflicting taxation methods. In either case, we contend that this Court is not the proper tribunal to remedy the problem. [Amici brief of National Governors' Association and State of Hawaii at 14, 15, 18]

The State of New Mexico is even more forthright in challenging *Japan Line*:

In *Japan Line* the Court held that where foreign commerce was at issue, a challenged tax must meet two tests in addition to those imposed by *Complete Auto Transit*. These tests are 1) whether the tax subjects foreign commerce to multiple tax burdens . . . The multiple burdens test is not compelled by the Constitution. . . .

• • •

. . . If California's tax is found to be fairly apportioned and treats domestic, interstate and foreign commerce with an even hand, the imposition of a tax by other jurisdictions is not relevant to the validity of California's tax under the commerce clause. [Amicus brief of State of New Mexico at 9, 13]

And Vermont agrees:

Because the Court would be without jurisdiction to regulate the taxing schemes of foreign countries, a requirement that California's fair apportionment formula must yield to the allocation made by a foreign government would render California impotent to exact from multinational commerce its share of the cost of government. [Amicus brief of State of Vermont at 10]

The arguments made by these *amici* in the *Container* case must be rejected. When the taxing authorities sought,

in *Japan Line*, to assert that the blame for any multiple taxation rested, not with California, but with Japan, this Court acknowledged that the argument might have force "in the interstate commerce context," citing *Moorman Mfg. Co.* v. *Bair*, 437 U.S. 267 (1978). However, precisely because "this Court is powerless to correct malapportionment of taxes imposed from abroad in foreign commerce," a fair apportionment formulary method of taxation which conflicted with the internationally accepted allocation method of taxation imposed by foreign governments was struck down. [*Japan Line*, 441 U.S. at 454]

In *Japan Line* this Court also rejected a *de minimis* argument based on *Moorman*, noting that:

> *Moorman*, finally, concerned interstate commerce. This case concerns foreign commerce. Even a slight overlapping of tax—a problem that might be deemed *de minimis* in a domestic context—assumes importance when sensitive matters of foreign relations and national sovereignty are concerned. [*Japan Line*, 441 U.S. at 455-56]

The rationale which underlay the *Japan Line* holding with respect to multiple taxation was explicated in *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425 (1980):

> Taxation by apportionment and taxation by allocation to a single situs are theoretically incommensurate, and if the latter method is constitutionally preferred, a tax based on the former cannot be sustained. [*Mobil*, 445 U.S. at 444-45]

Since taxation by allocation of income based on arm's-length reporting is internationally accepted and employed, and since this Court cannot affect the preference of foreign governments for arm's-length reporting, taxation by apportionment of combined worldwide income cannot be sustained if *Japan Line* is to be followed.

IV.

Worldwide Combination And The Need To "Speak With One Voice"

The second consideration which relates to foreign commerce is the need for the United States to "speak with one voice" in matters affecting trade and our relations with other nations. If a State tax impairs federal uniformity in such matters, *Japan Line* holds that such tax must fall, regardless of any other consideration. CBI believes that it has demonstrated that worldwide combined reporting impairs federal uniformity with respect to the taxation of multinational corporations.

On April 27, 1982, members of the British Parliament expressed their continuing hostility to combined reporting in the following terms:

> Mr. Michael Grylls (Surrey, North-West):
>
> I think that the House of Commons in London would say to the United States Government in all seriousness that they cannot relinquish their right to determine international economic policy. They cannot shrug that off, leave it in the hands of the States and leave foreign companies at their beck and call and taxed in that strange way.
>
> * * *
>
> We have been patient because we are dealing with friends. We took our friends on trust. Unfortunately, in this instance our friends have not delivered. The only thing left to the British House of Commons—there will be increasing pressure on us to do this—is for us to take our own legislative action to apply a combined world-wide reporting system to United States companies that operate in Britain.
>
> I do not hide from the House the fact that I would much regret having to do that, but the pressure is such and the damage that has been done to British companies is so serious that the only leverage that we have on

> Congress is to do to them what they have done to us. Then perhaps mutually we can both agree to stop doing it. [Parl. Deb., H.C., 825 (April 27, 1982)]

Mr. Nicholas Ridley, the Financial Secretary to the Treasury, responded:

> The use by certain States of the United States of the world-wide combined reporting system in conjunction with the unitary basis of taxation has been a long-standing issue between the United Kingdom and the United States of America. This basis is contrary to generally accepted international principles endorsed by the OECD [Organization for Economic Cooperation and Development].
>
> • • •
>
> My hon. Friend went a little further and suggested that we might have to resort to some retaliation or enactment of similar legislation against American companies if they do not desist from doing this in some American states. I hope that it will not come to that, but I note the growing irritation. We shall make it clear to the American Government that the criticisms, as expressed by my hon. Friend, are mounting and that we cannot forever accept this asymmetry in our taxation arrangements. . . . [Parl. Deb., H.C., 826, 828 (April 27, 1982)]

These expressions of concern by members of the British Parliament were followed on May 18, 1982 by Note No. 83 from the British Embassy to the United States Department of State:

> Her Majesty's Government therefore urges as a matter of high priority that the Government of the United States should use its best endeavors to eliminate the international application of the unitary basis of taxation.

Similarly, on June 29, 1982, the Government of Belgium, as President of the ten European Economic Community

governments, delivered to the Department of State a Note stating:

> Our Governments remain firmly convinced that the unitary basis of taxation with combined reporting, particularly as applied in the international field, is entirely unsatisfactory.

Despite these statements of official position by foreign governments, an effort continues to be made in the *Container* case to persuade this Court that arm's-length reporting does not represent the custom of nations and that the national interest does not require its adoption by the States. This effort is being made even in the face of recognition by G. J. Harley, a noted proponent of worldwide combination, that:

> Nearly every country now utilizes the [arm's-length] standard. Double tax conventions are based upon it. It is truly an international standard and there is considerable agreement as to its basic content. [G. Harley, International Division of the Income Tax Base of Multinational Enterprise *i* (Multistate Tax Commission 1981)]

For example, the State of Illinois asserts in the *Container* case:

> The fact that an international standard of taxation does not exist is further evidenced by the lack of an international administration to enforce this standard. When a corporation sells a product or sells a service, or loans money to an affiliated corporation, a determination must be made as to the "arms-length" character of the transaction. . . . A state auditor may disagree with the estimate of the taxpayer on many of these transactions. A federal auditor may disagree with both the taxpayer and the state auditor. Auditors from foreign countries may disagree with each other as well as with the taxpayer, the state auditor and the federal auditor. Thus, instead of speaking with one voice, these

> transactions bring forth a babble of voices. Simply put, there is no international standard of taxation, and neither California nor any of the other states have prevented the United States from speaking with one voice on this matter. [Amicus brief of State of Illinois at 11-12]

In strikingly similar terms, Frank M. Keesling, the "father" of combined reporting, states in the *Container* case:

> [I]nstead of enabling the nation to speak with one voice, the use of the separate accounting procedure results in the nation speaking with a babble of voices—as many as there are taxpayers and taxing agencies concerned. [Amicus brief of Keesling at 29-30]

These arguments completely disregard the fact that the tax treaties between the United States and other nations, as a matter of course, include a provision for the designation of "competent authorities" by the signatory nations so that disputes may be resolved by mutual agreement. See, for example, Articles 3(1), 9(2) and 25 of the United States "Model" Income Tax Treaty, 46 Fed. Reg. 37,432, (released by the Treasury Department on July 13, 1981). Indeed, the Treasury Department has set out detailed procedures under which such treaty provisions are to be implemented. See Rev. Proc. 70-18, 1970-2 C.B. 493, amplified by Rev. Proc. 79-31, 1979-1 C.B. 599. Truly, it is not the arm's-length method, but the arbitrary adoption by a few States of an antithetical method, which prevents this Nation from speaking with one voice.

The State of California in the *Container* case seeks to denigrate the interest of the United States in this issue:

> Various attorneys for the federal government are too often diverse in their opinions . . . . The Solicitor General does not dictate what is the policy of this country on foreign relations. [Brief of California Franchise Tax Board at 124-125]

However, the interest of the United States was explicitly stated in the Memorandum for the United States as Amicus Curiae in the instant case:

> We are accordingly advised by the Departments of State and Treasury, the Department of Commerce, acting at the request of the Delegation of the Commission of the European Communities, and the United States Trade Representative, that a number of foreign governments have complained—both officially and unofficially—that the apportioned combined method empowered by Illinois and other states creates an irritant in their commercial relations with the United States. Retaliatory taxation may ensue, with consequent damage to international trade. Moreover, the method causes uncertainties because it differs from the federal arms-length standard that is generally accepted in international practice and in bilateral income tax conventions. [Memorandum for the United States as Amicus Curiae at 3]

Where the Solicitor General affirmatively seeks to participate and takes a formal position before this Court pursuant to requests from the Departments of State, Treasury and Commerce and from the United States Trade Representative, it is hardly credible to assert that the question of worldwide combined reporting is unrelated to the Nation's need to "speak with one voice." Moreover, the position of the Federal Government has not changed. In a letter to Senator Charles Mathias dated September 25, 1982, John E. Chapoton, Assistant Secretary of the Treasury for Tax Policy, stated:

> Two cases (*Chicago Bridge and Iron Company* and *Container Corporation*) on the docket of the United States Supreme Court for argument in the fall term raise the issue whether it is unconstitutional for a state to apply the worldwide combined unitary tax method even in the absence of federal legislation barring them from using that method. As you know, *the Solicitor*

> *General has filed an amicus curiae brief in the Chicago Bridge case which sets forth the views of the United States regarding the constitutionality of the worldwide combined unitary tax method.* [Emphasis supplied]

On this issue, with respect to multiple taxation, the State of New Mexico takes the position in the *Container* case that *Japan Line* was wrongly decided:

> In *Japan Line* the Court held that where foreign commerce was at issue, a challenged tax must meet two tests in addition to those imposed by *Complete Auto Transit*. These tests are . . . 2) whether the tax prevents the federal government from speaking with one voice in its relations with foreign nations . . . . The broad pre-emption standard developed under the federal uniformity test is not warranted under the supremacy clause. [Amicus brief of State of New Mexico at 9]

CBI agrees with New Mexico that the test enunciated by the *Japan Line* Court, applicable where foreign commerce is concerned, requires invalidation of state statutes requiring worldwide combined reporting. CBI does not agree that this test is erroneous, or that decisions dealing with conflicts in domestic policy are relevant.

V.

Corporate Domicile Is Immaterial

During oral argument, Mr. Harnack, counsel for Caterpillar, was asked whether there is any suggestion that the States which seek to impose worldwide combined reporting would differentiate between multinational corporate groups in which the parent is a foreign corporation and multinational corporate groups in which the parent is domiciled in the United States. Mr. Harnack admitted candidly that there is no such suggestion, stating that California has asserted worldwide combination against foreign-controlled

groups. [Tr. 27-28] The Comptroller General's Report states that thirteen States employ worldwide combined reporting which "involves combining the income of (1) a foreign parent corporation with its U.S. subsidiary corporations doing business in the State; or (2) foreign subsidiary corporations with their U.S. parent corporation doing business in the State." [Comptroller General's Report at 31.]

Despite the fact that no State differentiates between the situation in which the parent of a worldwide group is foreign-based and that in which the parent is U.S.-based, Caterpillar suggested in its Brief [pp. 43-45] and in oral argument [Tr. 28-29] that a distinction could and should be drawn between these two cases. For this Court to attempt to draw such a distinction would, CBI submits, raise far more questions than it would answer.

One such question would be: Where a corporate group involves more than one holding company, which member of the group is to be treated as the parent, the domicile of which would control whether the group is foreign or domestic for purposes of determining whether a member of the group is subject to combined reporting? For example, documents filed in the case of *Shell Petroleum N.V.* v. *Graves,* No. 81-4302 Civ. (N.D. Cal. filed Nov. 4, 1981), indicate that the Royal Dutch/Shell Group of companies is headed by Royal Dutch Petroleum Company, a Netherlands company, and by The "Shell" Transport and Trading Company, Limited, a U.K. corporation. Neither of these corporations is engaged in the oil or chemical business, but they are holding companies which own the shares of two other holding companies, Shell Petroleum, N.V., a Netherlands company, and The Shell Petroleum Company, Limited, a U.K. company. Royal Dutch owns 60% and "Shell" Transport owns 40% of each of the latter two companies. The parent companies appoint the directors of the latter

two, and receive income in the form of dividends from them. The two subsidiary holding companies, in turn, own shares, directly and indirectly, in operating companies engaged in various segments of the oil and chemical industries in more than one hundred countries, one of which companies is Shell Oil Company, a U.S. corporation. [Plaintiff's Complaint at 3, 4, 10] The California Franchise Tax Board is attempting to treat the entire Royal Dutch/Shell Group as a unitary business. Presumably, it would be regarded as having its parent domiciled in the Netherlands, since Royal Dutch, a Netherlands company, owns 60% of the Group. However, if Royal Dutch were to transfer its interest to a U.S. holding company, would the transfer have some magical effect on the propriety of worldwide combined reporting? If the two parent companies owned the group 50-50, rather than 60-40, which would be the parent, or would neither? Would the result change if one parent were a U.S. corporation and the other were foreign?

Another question might involve shareholders. If the top corporate entity in a unitary business were a holding company incorporated in the Isle of Man, but all of its shareholders were United States residents, would the unitary business be deemed to have a U.S. parent or a foreign parent?

Would the rules change in the event of a successful tender offer for the shares of the parent of a multinational group? For example, Marshall Field & Co., which filed an *amicus* brief in this case supporting combined reporting, has recently been acquired by B.A.T. Industries, which filed an *amicus* brief taking the opposite point of view. Assuming that Marshall Field had originally opposed combined reporting (as it presumably now does), could it have staved

off an attempt by Illinois to impose that method by soliciting a take-over by a foreign entity?

Not only would factual and legal thickets of impenetrable density spring up were the propriety of worldwide combined reporting to turn upon the situs of the "parent" corporation, but equal protection problems might also arise. Is it constitutionally permissible to impose vastly different methods of taxation on two subsidiaries which are identical but for the fact that one is owned by a domestic parent and the other by a foreign parent?

In summarizing the principles developed by this Court with respect to the constitutional requirement that all persons be afforded equal protection of the laws, Tussman and tenBroek have stated:

> The Constitution does not require that things different in fact be treated in law as though they were the same. But it does require, in its concern for equality, that those who are similarly situated be similarly treated. The measure of the reasonableness of a classification is the degree of its success in treating similarly those similarly situated. . . .
>
> • • •
>
> . . . [W]here are we to look for the test of similarity of situation which determines the reasonableness of a classification? The inescapable answer is that we must look beyond the classification to the purpose of the law. *A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law.* [J. Tussman and J. tenBroek, *The Equal Protection of the Laws*, 37 Cal. L. Rev. 341 at 344, 346 (1949) (emphasis supplied)]

With regard to combined reporting, the purpose of the law, as stated by the Illinois Department of Revenue, quoting the Illinois Appellate Court in this case, is:

> The application of the unitary method is intended to solve the problem of accurately identifying the portion

> of the business income of each member of the unitary business which is attributable to a given state. [D.O.R. Brief at 9]

Thus, the purported purpose of combined reporting is to determine with greater accuracy the apportionable income of a corporation which is a member of a group conducting a unitary business. Such a purpose applies whether the parent is a foreign corporation or a U.S. corporation. The purpose of the law—determination of the apportionable income of a member of the group subject to the jurisdiction of the taxing State—is the same in either case. If Corporations A and B are both subject to the taxing jurisdiction of State X and are both members of worldwide corporate groups conducting unitary businesses, and if State X determines the apportionable business income of Corporation A by means of worldwide combined reporting, but does not do so with respect to Corporation B, solely because the parent of B's corporate family is a foreign corporation, two corporations similarly situated with respect to the purpose of the law are treated unequally.

A leading decision on this subject and one which bears a striking resemblance to the instant case is *F. S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412 (1920), in which this Court struck down a State statute that required domestic corporations doing business within and without the State to pay a tax on income derived from both sources, while domestic corporations doing business solely without the State were exempted. The basic principles which have been followed in numerous other decisions were there expressed:

> It is unnecessary to say that the "equal protection of the laws" required by the Fourteenth Amendment does not prevent the States from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this court establish that they have

> a wide range of discretion in that regard. But *the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.* . . . Now both of the taxing provisions here in question relate to corporations organized under the laws of Virginia. It is the object of c. 495 to exempt such corporations from income taxes (as well as taxes upon intangible property) where they do no business within the State except holding their stockholders' meetings therein; manifestly in recognition of the fact that Virginia corporations so circumstanced derive no governmental protection from the State warranting the imposition of taxes upon their incomes derived from without the State or property taxes upon their intangibles, and a recognition of the impolicy if not injustice of imposing such taxes upon them while they are liable, and presumably subjected, to taxation in the State or States where their income-producing business is conducted. But no ground is suggested, nor can we conceive of any, sustaining this exemption which does not apply with equal or greater force as a ground for exempting from taxation the income of Virginia corporations derived from sources without the State where they also transact income-producing business within the State. . . . It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. [253 U.S. at 415-416; emphasis supplied]

Royster Guano and the principles which it enunciated have been repeatedly cited with approval, most recently in *Cabax* v. *Mohammed*, 441 U.S. 380, 391 (1979).

Note, also, *Boston Stock Exchange* v. *State Tax Commission*, 429 U.S. 318 (1977), and *Zee Toys, Inc.* v. *County of Los Angeles*, 85 Cal. App. 3d 763 (1978), *aff'd sub nom. Sears, Roebuck & Co.* v. *County of Los Angeles*, 449 U.S. 1119 (1981) (4-4 decision). In the latter case, the California

Court of Appeal noted that "[t]he selective exemption of goods of foreign origin, thereby giving them a competitive advantage over interstate goods, is a regulation of interstate and foreign commerce in violation of the commerce clause in the United States Constitution." [*Zee Toys*, 85 Cal. App. 3d at 769] If the commerce clause requires exemption from combined reporting of worldwide corporate groups with foreign parents, the commerce clause similarly requires exemption of such groups with domestic parents. To assert that discrimination which would otherwise be prohibited by the commerce clause becomes permissible if one class of taxpayers is given an exemption under that same clause is to render the commerce clause restriction meaningless.

VI.

Is Worldwide Combination Vitally Important To The States?

Although CBI has consistently asserted that the constitutionality of worldwide combined reporting does not turn on the need for revenue of the States employing it, proponents persist in asserting that it is essential to prevent a "corporate shell game" in which multinational corporations hide their income from States in dire need of tax receipts. A similar line of reasoning was rejected by this Court in *Hoeper*. It should also be rejected here. Moreover, the validity of the premises on which it is based is open to serious question.

In the legislative session which ended June 30, 1982, the Illinois General Assembly enacted H.B. 2588 which, as enacted, would have abolished combined reporting as a method of taxation in Illinois for taxable years ending on and after December 31, 1982. H.B. 2588 would not affect the right of the State of Illinois to impose combined reporting for the taxable years involved in this case. At the

request of the Illinois Department of Revenue and the Illinois Department of Commerce and Community Affairs, Coopers & Lybrand prepared a report on the economic development impacts of H.B. 2588 and other tax alternatives. Coopers & Lybrand made the following significant finding:

> It is noteworthy . . . that no respondent favored worldwide combined reporting who did not also benefit on the bottom line from this approach. However, there were several respondents who benefited from worldwide combined reporting but nonetheless opposed it on grounds of principle. [Coopers & Lybrand, *Economic Impacts and Tax Alternatives Associated with Worldwide Combined Reporting for the State of Illinois vi* (Sept. 20, 1982)]

Governor Thompson, upon receiving this report, issued an amendatory veto of H.B. 2588, in which he specifically rejected worldwide combined reporting as "an undesirable form of state taxation," although he recommended retention of combined reporting for domestic corporations. The Governor also supported a clear-cut definition of a unitary business, a requirement that functional integration exist through the exercise of a strong centralized management, and favorable treatment for both domestic and foreign dividends. He also noted the instant litigation before this Court and recognized that the issue "may have to be reexamined when national decisions are reached." Nevertheless, he expressed his belief that:

> [W]ith these changes Illinois will assume a leadership role in the area of corporate taxation. Illinois is a state with a diverse economy and must treat all of its taxpayers fairly. With these changes Illinois will be attractive to businesses and will send the signal that we listen, we care, and we can make corrections in the tax system which benefit them and benefit the State as well. [Amendatory veto of H.B. 2588 at 2]

Clearly, not everyone would agree with the Multistate Tax Commission and others that worldwide combined reporting is vitally important to the States. The Governor's approach was accepted by the Illinois General Assembly when it affirmed the amendatory veto of H.B. 2588 on December 2, 1982.

SUMMARY

In *ASARCO* and *Woolworth*, this Court applied the unitary-business principle of *Mobil* and *Exxon* to determine whether dividends *received* by nondomiciliary taxpayers can be *apportioned* to the taxing State. It is evident from *ASARCO* and *Woolworth* that *Mobil* and *Exxon* do not constitute support for the issue presented in the instant case: whether combined reporting can be used to determine the *amount* of a taxpayer's income.

CBI respectfully submits that, contrary to assertions in briefs filed in the *Container* case, worldwide combined reporting would result in multiple taxation, in contravention of the due process clause and this Court's holding in *Japan Line*. Worldwide combined reporting would also impair the ability of the United States to "speak with one voice" in the area of foreign commerce. CBI submits, further, that an attempt by this Court to draw a distinction between foreign-based corporate groups and U.S.-based corporate groups would raise far more troublesome questions than it would answer.

CONCLUSION

For the reasons set forth above, the decision of the Supreme Court of Illinois should be reversed.

Dated: December 8, 1982

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Supplemental Appellee's Brief

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No. 81-349

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

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Appellant,

v.

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Appellees.

Appeal from the Supreme Court of Illinois

SUPPLEMENTAL BRIEF OF CO-APPELLEES ILLINOIS DEPARTMENT OF REVENUE, ET AL.

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TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	i
Reason for Filing Supplemental Brief	1
Effect of Newly Enacted Legislation on This Case	2
Description of Newly Enacted Legislation	2
Changes in Illinois Law	4
Conclusion	6

TABLE OF AUTHORITIES

Ill. Rev. Stat. (1982) ch. 120, sec. 1-101 *et seq.*	4
Sec. 2-203(b)(2)(J)	3, 4
Sec. 3-304(a)(3)(B)(ii)	3, 4
Sec. 3-304(e)	2, 4
Sec. 15-1501(a)(27)	3, 5
Illinois House Bill (H.B.) 2588, 82nd Gen. Ass. (1982)	2
Amendatory Veto of H.B. 2588 by the Governor of Illinois (Sept. 20, 1982)	2, 4, 6

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REASON FOR FILING SUPPLEMENTAL BRIEF

This brief is filed in accordance with Rule 35(5) in order to advise the Court of legislative changes which became law on December 15, 1982. This case has not been called for reargument as of the filing of this brief.

EFFECT OF NEWLY ENACTED LEGISLATION ON THIS CASE

The legislative changes apply to taxable years ending on and after December 31, 1982. Since this case involves the tax liability of Caterpillar Tractor Company and related corporations for the years 1969 thru 1974, the legislative changes do not affect the applicable state law in this lawsuit. Co-appellees continue to request this Court to affirm the decision of the Supreme Court of Illinois.

DESCRIPTION OF NEWLY ENACTED LEGISLATION

During June, 1982, the Illinois General Assembly passed H.B. 2588 which would have prohibited the use of combined apportionment in the determination of a corporation's Illinois income tax liability. On September 20, 1982 Governor Thompson amendatorily vetoed this legislation. On December 2, 1982, the General Assembly approved the Governor's amendments. On December 15, 1982, the Governor certified this legislation and H.B. 2588 as amended became law.

Instead of prohibiting the use of world-wide combined apportionment, this legislation creates a form of "domestic" combination by providing a statutory definition of "unitary business group." See sec. 3-304(e). A "unitary business group" has several characteristics: it does

not include corporations which have 80% or more of their business activity located outside of the United States; sales are not considered in determining the location of business activity of companies which use a three factor apportionment formula; insurance companies, financial organizations and transportation companies will not be combined with any corporation which uses a three factor apportionment formula; and the unitary group is otherwise comprised of commonly owned corporations which are functionally integrated through the exercise of strong centralized management. See sec. 15-1501(a)(27).

In addition, dividends received from foreign corporations may be deducted either entirely or in part from a domestic corporation's federal taxable income. See sec. 2-203(b)(2)(J). Also, certain sales are to be eliminated from the numerator of the Illinois sales factor if either the seller or purchaser is excluded from the "unitary business group" because 80% or more of its total business activity is without the United States. See sec. 3-304(a)(3)(B)(ii).

CHANGES IN ILLINOIS LAW

The amendatory veto to H.B. 2588 added the following provisions to the Illinois Income Tax Act, Ill. Rev. Stat. (1982) ch. 120, sec. 1-101 *et seq.*:

> 2-203(b)(2)(J) An amount equal to: (i) 85 percent of the amount by which dividends included in taxable income and received from a corporation that is not created or organized under the laws of the United States or any state or political subdivision thereof exceeds the amount of the modification provided under subparagraph (F) of paragraph (2) of this subsection (b) which is related to such dividends, plus; (ii) 100 percent of the amount by which dividends included in taxable income and received from any such corporation specified in (i) above that would, but for the provisions of Section 1504(b)(3) of the Internal Revenue Code, be treated as a member of the affiliated group which includes the dividend recipient exceeds the amount of the modification provided under subparagraph (F) of paragraph (2) of this subsection (b) which is related to such dividends.
>
> 3-304(a)(3)(B)(ii) . . . Nor will sales of tangible personal property be in this State if the seller and purchaser would be members of the same unitary business group but for the fact that either the seller or purchaser is a person with 80 percent or more of total business activity without the United States and the property is purchased for resale.
>
> 3-304(e) Combined apportionment. Where two or more persons are engaged in a unitary business (see section 1501(a)(27)), a part of which is conducted in this State by one or more members of the group, the business income attributable to this State by any such member or members shall be apportioned by means of the combined apportionment method.
>
> (Note—The previous 3-304(e) is now 3-304(f))

15-1501(a)(27) Unitary business group. The term "unitary business group" means a group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other. The group will not include those members whose business activity without the United States is 80 percent or more of any such member's total business activity; for purposes of this paragraph and Section 304(a)(3)(B)(ii), business activity within the United States shall be measured by means of the factors ordinarily applicable under subsections (a), (b), (c), and (d) of section 304 except that, in the case of corporations ordinarily required to apportion business income by means of the three factor formula of property, payroll and sales specified in subsection (a) of Section 304, such corporations shall not use the sales factor in the computation and the results of the property and payroll factor computations shall be divided by two (by one if either the property or payroll factor has a denominator of zero). Common ownership in the case of corporations is the direct or indirect control or ownership of more than 50% of the outstanding voting stock of the persons carrying on unitary business activity. Unitary business activity can ordinarily be illustrated where the activities of the members are: (1) in the same general line (e.g., manufacturing, wholesaling, retailing, insurance, transportation, finance, et al.,); or, (2) are steps in a vertically structured enterprise or process (e.g., the steps involved in the production of natural resources, viz., exploration, mining, refining, and marketing); and, in either instance, the members are functionally integrated through the exercise of strong centralized management (where, for example, authority over such matters as purchasing, financing, tax compliance, product line, personnel, marketing and capital investment is not left to each member). In no event, however, will a unitary group include both persons who are ordinarily required to apportion income by means of the three factor formula of property, payroll and sales

and persons who are ordinarily required to apportion income by means of the single factors specified in subsections (b), (c) and (d) of section 304.

Section 2 of H.B. 2588, as amended, provides as follows:

This Act takes effect immediately and applies to taxable years ending on and after December 31, 1982.

CONCLUSION

Since the newly enacted legislation does not affect the state law applicable to the time period involved in this case, the decision of the Illinois Supreme Court should be affirmed.

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Appellee's Reply Brief

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TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. *ASARCO* AND *WOOLWORTH* DO NOT LIMIT THE USE OF COMBINED APPORTIONMENT 1

A. The Resurrection of *Hoeper* 5

B. The Myth of Independent Sourcing of Income 6

II. *BASS, RATCLIFF* DOES NOT TURN ON CORPORATE STRUCTURE 6

III. WORLDWIDE COMBINATION IS NOT SYNONYMOUS WITH MULTIPLE TAXATION 8

IV. SPEAKING WITH ONE VOICE 9

V. CORPORATE DOMICILE 11

VI. THE ISSUE PRESENTED 13

CONCLUSION 18

TABLE OF AUTHORITIES

Cases: PAGE

ASARCO Inc. v. *Idaho State Tax Commission*, 50 U.S.L.W. 4962, 73 L.Ed.2d 787, 102 S.Ct. 3103 (June 29, 1982), *reh'g denied*, 51 U.S.L.W. 3304 (Oct. 18, 1982) ..... i, 1, 2, 3, 4

Barclay & Co. v. *Edwards*, 267 U.S. 442, 69 L.Ed. 703, 45 S.Ct. 135 (1924) 6, 10, 13

Bass, Ratcliff & Gretton, Ltd. v. *State Tax Commission*, 266 U.S. 271, 69 L.Ed. 282, 45 S.Ct. 82 (1924) .. i, 6, 9

Butler Brothers v. *McColgan*, 315 U.S. 501, 86 L.Ed. 991, 62 S.Ct. 701 (1942) 6

Caban v. *Mohammed*, 441 U.S. 380, 60 L.Ed.2d 297, 99 S.Ct. 1760 (1979) 5

Caterpillar Tractor Co. v. *Lenckos*, 84 Ill.2d 102, 417 N.E.2d 1343 (1981), *aff'g*, 77 Ill. App.3d 90, 395 N.E.2d 1167, *aff'g*, No. 78 L 5615 (Peoria County Cir. Ct.) (1979), *prob. juris. noted sub nom. Chicago Bridge & Iron Company* v. *Caterpillar Tractor Co.*, (No. 81-349) (U.S. Sup. Ct.) 1, 4, 14, 15, 16

Clark v. *Allen*, 331 U.S. 503, 91 L.Ed. 1633, 67 S.Ct. 1431 (1947) 11

Coca Cola Co. v. *Department of Revenue*, 271 Or. 517, 533 P.2d 788 (Or. 1975) 4, 8

DeCanas v. *Bica*, 424 U.S. 351, 47 L.Ed.2d 43, 96 S.Ct. 933 (1976) 11

Edison California Stores, Inc. v. *McColgan*, 30 Cal.2d 472, 183 P.2d 16 (Cal. 1947) 4, 9

Exxon Corp. v. *Wisconsin Dept. of Revenue*, 447 U.S. 207, 65 L.Ed.2d 66, 100 S.Ct. 2109 (1980) 6

F.S. Royster Guano Co. v. *Virginia*, 253 U.S. 412, 64 L.Ed. 989, 40 S.Ct. 560 (1920) 12

PAGE

F.W. Woolworth Co. v. *Taxation & Revenue Dept.*, 50 U.S.L.W. 4957, 73 L.Ed.2d 819, 102 S.Ct. 3128 (June 29, 1982), *reh'g denied*, 51 U.S.L.W. 3304 (Oct. 18, 1982) ..... i, 1, 3

Hans Rees' Sons, Inc. v. *North Carolina*, 283 U.S. 123, 75 L.Ed. 879, 51 S.Ct. 385 (1931) 9, 11

Hoeper v. *Tax Commission of Wisconsin*, 284 U.S. 206, 76 L.Ed. 248, 52 S.Ct. 120 (1931) ..... i, 5

Japan Line, Ltd. v. *County of Los Angeles*, 441 U.S. 434, 60 L.Ed.2d 336, 99 S.Ct. 1813 (1979) 9

Joslin Dry Goods Co. v. *Dolan*, 615 P.2d 16 (Colo. 1980) 4, 9

Maine v. *Grand Trunk Ry. Co.*, 142 U.S. 217, 35 L.Ed. 994, 12 S.Ct. 121 (1891) 11

Matson Navigation Co. v. *State Board of Equalization of California*, 297 U.S. 441, 80 L.Ed. 791, 56 S.Ct. 553 (1936) 9, 13

Michelin Tire Corp. v. *Wages*, 423 U.S. 276, 46 L.Ed.2d 495, 96 S.Ct. 535 (1976) 11

Mobil Oil Corp. v. *Commissioner of Taxes*, 445 U.S. 425, 63 L.Ed.2d 510, 100 S.Ct. 1223 (1980) 2, 3, 4, 5, 9

Moorman Mfg. Co. v. *Bair*, 437 U.S. 267, 57 L.Ed.2d 197, 98 S.Ct. 2340 (1978) 8

National Paper Co. v. *Bowers*, 266 U.S. 373, 69 L.Ed. 331, 45 S.Ct. 133 (1924) 10

Sumitomo Shoji America, Inc. v. *Avagliano*, 50 U.S.L.W. 4643, 72 L.Ed.2d 765, 102 S.Ct. 2374 (June 15, 1982) 7, 8

Union Brokerage Co. v. *Jensen*, 322 U.S. 202, 88 L.Ed. 1227, 64 S.Ct. 967 (1944) 10

United States Constitution:

Commerce Clause, Article I, Section 8, Clause 3 ..... 4, 8, 9, 11, 12

Fourteenth Amendment, Section 1 ..... 5, 8, 11, 12, 13

PAGE

Statutes:

Illinois House Bill (H.B.) 2588, 82nd General Assembly (1982) 12

Illinois Income Tax Act, Ill. Rev. Stat. 1979, ch.120, § 3-304(e) 13

Illinois Income Tax Act, Ill. Rev. Stat. 1979, Articles 2 and 3 16

Multistate Tax Compact, *reprinted in* 1 State Tax Guide (CCH) ¶ 351 ..... 14, 16

Section 78 of the Internal Revenue Code of 1954, 26 U.S.C. § 78 (1976) 3

Treaties:

Friendship, Commerce and Navigation Treaty Between Japan and United States, October 30, 1953, 4 U.S.T. 2063, T.I.A.S. No. 2863 7

United States Treasury Department Model Income Tax Treaty, June 16, 1981, *reprinted in* 1 Tax Treaties (CCH) ¶ 158 ..... 7, 11

Miscellaneous:

British Parliamentary Debate, House of Commons 823–28 (April 27, 1982) 10

H.R. 1983, 97th Cong., 1st Sess. (1981) 12

Report of the OECD Committee on Fiscal Affairs, *Model Convention for Avoidance of Double Taxation with Respect to Taxes on Income and on Capital* (1977), *reprinted in* Appendix A, Income Tax Treaties (J. Bischel ed. 1978) 8

S. 655, 97th Cong., 1st Sess. (1981) 12

Williams, "*Permanent Establishments in the United States*," 29 Tax Law. 277 (1976) 8

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ARGUMENT

I. *ASARCO* AND *WOOLWORTH* DO NOT LIMIT THE USE OF COMBINED APPORTIONMENT.

Despite Appellant's apparent concession during oral argument that the combined method of apportionment has no constitutional infirmity when applied to domestic unitary business groups (Tr. at 14-15),[1] Appellant now urges that *ASARCO Inc.* v. *Idaho State Tax Commission*, 50 U.S.L.W. 4962, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982), and *F.W. Woolworth Co.* v. *Taxation & Revenue Dept.*, 50 U.S.L.W. 4957, 73

[1] Transcript reference is to official transcript of oral argument in *Chicago Bridge & Iron* v. *Caterpillar Tractor Co.*, unless otherwise noted.

L.Ed.2d 819, 102 S.Ct. 3128 (1982), when read in conjunction with *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425, 63 L.Ed.2d 510, 100 S.Ct. 1223 (1980), mandate a decision that combination is unconstitutional in both an international and domestic context (Appellant's Supplemental Brief "Supp. Br." at 2-8). Appellant scrambles concepts and definitions and applies them to invalid assumptions in making this argument.

In *ASARCO*, this Court considered whether Idaho could tax the dividend income of a non-domiciliary corporate taxpayer, doing business in that state, as business income when the payor corporation did not engage in a unitary business enterprise with the payee corporation. Counsel for Idaho conceded at least four times during oral argument that the dividend income in question was not received from a payor engaged in a unitary business enterprise with ASARCO (*ASARCO* Tr. at 31, 32, 36).[2] Idaho argued that, notwithstanding the absence of a unitary business enterprise, minimal business connections existing between the two entities justified Idaho's determination that dividends received from Asarco Peru constituted business income to ASARCO.

By accepting Idaho's argument this Court would have validated an almost discretionary standard for classifying income as business income and rendered the distinction between business income and non-business income nugatory. This Court refused to accept Idaho's proposed test and, consistent with its decision in *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425 (1980), found that the dividends ASARCO received from Asarco Peru, a payee not engaged in a unitary business enterprise with ASARCO, were not subject to apportionment as business income.[3]

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[2] Transcript reference is to official transcript of oral argument in *ASARCO Inc.* v. *Idaho State Tax Commission.*

[3] This Court also found the dividends paid by four other non-unitary affiliates were not subject to apportionment as business income.

The Idaho Supreme Court chose not to reexamine the factual question of whether Asarco Peru was unitary in the context of this Court's *Mobil* decision. However, if the Idaho Supreme Court had found that Asarco Peru was unitary in the Aramco context, (i.e., if Asarco Peru were a part of the unitary business enterprise of Asarco as Aramco was a part of Mobil's unitary business enterprise), but not subject to combined apportionment under the Idaho statute because ASARCO exercised insufficient control over Asarco Peru, the *Mobil* decision would have required a finding that the dividends received were subject to apportionment as business income.

The opinions in *ASARCO Inc.* v. *Idaho State Tax Commission*, 102 S.Ct. 3103 (1982), and *F.W. Woolworth Co.* v. *Taxation & Revenue Dept.*, 102 S.Ct. 3128 (1982), do not furnish any legitimate basis for the restatement of Appellant's arguments in its Supplemental Brief. Appellant well knows that the method of combined apportionment is primarily used to apportion the income of a controlled group of corporations engaged in a unitary business enterprise, i.e., a corporate group wherein the parent's ownership interest in each affiliated corporation is greater than 50%.[4] *Mobil*, *ASARCO* and *Woolworth* involved business enterprises that were not subject to combined apportionment.

The question of how or whether dividend income of a non-unitary, non-combinable group of corporations is apportionable (under *Mobil* and *ASARCO*) is only present when income is received or deemed received.[5] The question of whether combined apportionment is appropriate is present in the context of a multi-corporate unitary business enterprise

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[4]Two related corporations in which Caterpillar Tractor Co. held only a 50% interest were not included in the Caterpillar unitary group. Appendix A, Brief of Appellees, Caterpillar Tractor Co., et al.

[5]For example, income is deemed received under Section 78 of Internal Revenue Code of 1954, 26 U.S.C. § 78 (1976).

where a method of apportionment is required to source income among the group's constituent member corporations.

This case, unlike *Mobil* or *ASARCO*, presents the issue of whether combined apportionment of the business income of Caterpillar,[6] a unitary business enterprise, violates the Commerce Clause or Caterpillar's right to due process. The issue is not whether "business income" exists; rather, the issue is whether the "underlying economic realities" (*Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. at 441) can be considered when apportioning the business income of a multi-corporate unitary business enterprise. The sole function of combined apportionment is to fairly source the business income of a member company of a unitary business enterprise on the basis of reasonable and recognized factors. *See*, *Edison California Stores, Inc.* v. *McColgan*, 30 Cal.2d 472, 183 P.2d 16 (Cal. 1947); *Joslin Dry Goods Co.* v. *Dolan*, 615 P.2d 16 (Colo. 1980)); *Coca Cola Co.* v. *Department of Revenue*, 271 Or. 517, 533 P.2d 788 (Or. 1975).

Appellant's argument that "the key is receipt" (Supp. Br. at 8) disregards the distinction between a unitary business enterprise conducted by independent corporations (Mobil and ASARCO) and a unitary business enterprise conducted by a multi-corporate group (Caterpillar). In the context of the *Mobil* and *ASARCO* facts, receipt by a payee corporation is essential to consideration of whether the income received is business income. In the context of the *Caterpillar* facts, receipt by the unitary business group is essential to consideration of the correct amount of income properly apportionable to each of the constituent members of the unitary group. Appellant's receipt test, if applied to a unitary group, would obviously prohibit domestic or worldwide combination. The Commerce Clause has never imposed such draconian restraints on the states.

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[6] Unless otherwise denoted, the term "Caterpillar" refers to the worldwide unitary group consisting of Caterpillar Tractor Co. and twenty-six wholly-owned subsidiaries (two 50% owned affiliates are not included).

A. The Resurrection of *Hoeper*.

Appellant continues to ignore the record and facts herein. In its fourth factual hypothetical[7] (Supp. Br. at 6-7), Appellant posits a unitary business structure but assumes facts antithetical to those required for a unitary business enterprise in an obvious effort to force this Court into an analytical quagmire. Caterpillar's facts, when substituted for the hypothetical facts in Appellant's examples, demonstrate the fallacy of the argument that combined apportionment results in a tax on one taxpayer measured by the income of another. Appellant does not deny that combination has resulted in a fair apportionment of income to Caterpillar Tractor Co. measured by that company's Illinois contributions to Caterpillar's worldwide unitary income. Appellant simply disregards all facts not supportive of its position.

Appellant's continued reliance on *Hoeper* v. *Tax Commission of Wisconsin*, 284 U.S. 206, 76 L.Ed. 248, 52 S.Ct. 120 (1931), as the foundation of its argument that the form of business organization controls state tax apportionment without regard to "the underlying economic realities" (*Mobil Oil Corp.* v. *Commission of Taxes*, 445 U.S. at 441) is misplaced. In *Hoeper*, this Court struck down a state statute that taxed a husband on his wife's separate income. In *Caban* v. *Mohammed*, 441 U.S. 380, 60 L.Ed.2d 297, 99 S.Ct. 1760 (1979) (Supp. Br. at 23), this Court overturned a state statute that denied all unwed fathers parental equality. Both decisions were premised upon perceived violations of the Equal Protection Clause of the Fourteenth Amendment. Appellant has attempted to extrapolate the decisions in these cases by applying their holdings to hypothetical facts. Clearly the decisions have no application to the record facts. The Caterpillar companies are not a "family," except in the broadest sense of the word. Appellant's attempt to prove that worldwide combination is unconstitutional through reference to the equal

[7] Other hypotheticals are found at pages 12-13, 44-45, Brief of Appellant.

protection rights of individual family members only highlights the fact that worldwide combination cannot be shown to violate the fourteenth amendment rights of any of the parties (or anyone similarly situated to the parties) of this action.

B. The Myth of Independent Sourcing of Income.

Appellant further obscures the issue in this case by assuming that Caterpillar's Illinois income is discrete and capable of determination without regard to Caterpillar's worldwide income (Supp. Br. at 7). Appellant concludes that a corporation taxed on income in excess of that sourced to Illinois on an arm's-length basis is placed at a competitive disadvantage *vis a vis* a corporation taxed on an arm's-length basis.

Appellant's argument is specious. The record demonstrates that Caterpillar's Illinois income cannot be isolated in the simplistic manner utilized by Appellant's Corporations A and B (Supp. Br. at 6-7). "The question where an income is earned is always a matter of doubt when the business is begun in one country and ended in another." *Barclay & Co.* v. *Edwards*, 267 U.S. 442, 450, 69 L.Ed. 703, 45 S.Ct. 135 (1924). Possibly, the income derived from independent grits manufacturers may be appropriately determined on an arm's-length basis (Supp. Br. at 7). But it is a *non sequitur* to thereby conclude that the income derived from an integrated, interdependent unitary business enterprise such as Caterpillar cannot be fairly apportioned via combination. *See, Exxon Corp.* v. *Wisconsin Dept. of Revenue*, 447 U.S. 207, 65 L.Ed.2d 66, 100 S.Ct. 2109 (1980); *Butler Brothers* v. *McColgan*, 315 U.S. 501, 86 L.Ed. 991, 62 S.Ct. 701 (1942).

II. *BASS, RATCLIFF* DOES NOT TURN ON CORPORATE STRUCTURE.

Appellant's contention that corporate structure is the touchstone of this Court's decision in *Bass, Ratcliff & Gretton, Ltd.* v. *State Tax Commission*, 266 U.S. 271, 69 L.Ed. 282, 45 S.Ct. 82 (1924) (Supp. Br. at 8) vitiates the rationale of that case. In *Bass, Ratcliff* this Court upheld New York's efforts to

apportion "profits earned by the Company from [its] *unitary business*," (emphasis added), 266 U.S. at 282. The opinion does not differentiate between branch offices and subsidiaries of a unitary business, yet Appellant contends this omission is "of vital significance" (Supp. Br. at 8).

Sumitomo Shoji America, Inc. v. *Avagliano*, 50 U.S.L.W. 4643, 72 L.Ed.2d 765, 102 S.Ct. 2374 (1982) provides no basis for Appellant's attempted distinction (Supp. Br. at 8). In *Sumitomo Shoji* the petitioner, a New York corporation wholly-owned by a Japanese parent company, hired only male Japanese citizens for its executive, managerial and sales positions. The petitioner claimed immunity from federal employment laws in reliance on Article VIII(1) of the Friendship, Commerce and Navigation Treaty between Japan and the United States, October 30, 1953, 4 U.S.T. 2063, T.I.A.S. No. 2863, which stated in pertinent part:

> "*(C)ompanies of either Party* shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice." (Emphasis added).

This Court held that under the literal language of the Treaty a New York subsidiary, unlike a branch office, was a "company of the United States, not a company of Japan." Thus, the Treaty did not insulate the petitioner's discriminatory practices from federal law. This Court noted, however, that as a "company of the United States," petitioner would enjoy the plethora of legal rights that benefited all U.S. companies.

The treaty that formed the basis of the branch/subsidiary distinction in *Sumitomo Shoji America, Inc.* v. *Avagliano*, 102 S.Ct. 2374 (1982), has no application in a tax context. The income tax treaties in effect between the United States and foreign countries telescope branches and subsidiaries into one category. *See*, Appellees' Brief at 30-32; *see also*, United States Treasury Department Model Income Tax Treaty (June 16,

1981), *reprinted in* 1 Tax Treaties (CCH) ¶ 158; Report of the OECD Committee on Fiscal Affairs, *Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital* (1977), *reprinted in* Appendix A, Income Tax Treaties (J. Bischel ed. 1978); Williams, *Permanent Establishments in the United States*, 29 Tax Law. 277 (1976). The tension suggested by Appellant between separately incorporated businesses and branch offices simply does not exist in the context of U.S. tax treaties.

Appellant espouses a distinction that this Court has found illusory and U.S. tax treaties have specifically disregarded. If a lesson is to be learned from *Sumitomo Shoji America, Inc.* v. *Avagliano*, 102 S.Ct. 2374, it is that the literal language of our treaties must be given effect. Clearly, Appellant's reliance on *Sumitomo Shoji* is misplaced.

III. WORLDWIDE COMBINATION IS NOT SYNONYMOUS WITH MULTIPLE TAXATION.

Appellant again asserts that "worldwide combined reporting inevitably causes multiple taxation." (Supp. Br. at 9; Appellant's Brief at 29-36; Reply Brief at 16). Repetition of this contention does not lend it credibility. The record in this case proves that worldwide combined reporting fairly reflected Caterpillar's Illinois income and actually avoided multiple taxation.

Appellant urges this Court to deny Caterpillar the right to use combined reporting based in part upon the allegation that Oregon imposed a double tax upon the Coca-Cola company[8] (Supp. Br. at 9-10). Even if this scenario were germane to this case, it would not mandate invalidation of combination with respect to Caterpillar. The Commerce Clause does not demand precision nor prohibit "any overlap in the computation of taxable income by the States," *Moorman Mfg. Co.* v. *Bair*, 437 U.S. 267, 278, 57 L.Ed.2d 197, 98 S.Ct. 2340 (1978), and the Due Process Clause will only

[8] *See, Coca-Cola* v. *Department of Revenue*, 271 Or. 517, 533 P. 2d 788 (Or. 1975).

protect a taxpayer who demonstrates a significant misapportionment of income. *Hans Rees' Sons, Inc.* v. *North Carolina*, 283 U.S. 123, 75 L.Ed. 879, 51 S.Ct. 385 (1931). The Caterpillar record demonstrates that neither double taxation nor misapportionment of Caterpillar's income results in this case.

Japan Line, Ltd. v. *County of Los Angeles*, 441 U.S. 434, 60 L.Ed.2d 336, 99 S.Ct. 1813 (1979) does not alter the result (*Cf.* Supp. Br. at 12). Therein, this Court found that California's tax on "instrumentalities of commerce that are owned, based and registered abroad and that are used exclusively in international commerce" violated the Commerce Clause. 441 U.S. at 444. The narrow question decided in *Japan Line* does not support a holding that the Commerce Clause precludes a fairly apportioned income tax on a U.S. parent of a unitary group (Caterpillar Tractor Co.) where the apportionment formula considers the income of the unitary business group including foreign corporations subject to tax by foreign jurisdictions.

This Court has consistently upheld a state's right to impose a fairly apportioned tax on a corporation doing business within the state, even though the corporation is also engaged in foreign commerce. *Bass, Ratcliff & Gretton, Ltd.* v. *State Tax Commission* 266 U.S. 271 (1924); *Matson Navigation Co.* v. *State Board of Equalization of California*, 297 U.S. 441, 80 L.Ed. 791, 56 S.Ct. 553 (1936). The fact that Caterpillar's foreign business is conducted by way of separately incorporated entities cannot transform a fairly apportioned tax into an unconstitutional double tax. The economic realities are functionally equivalent and the same result is mandated. *See*, *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425 (1980); *see also*, *Edison California Stores, Inc.* v. *McColgan*, 30 Cal.2d 472, 183 P.2d 16 (1947); *Joslin Dry Goods Co.* v. *Dolan*, 615 P.2d 16 (Colo. 1980).

IV. SPEAKING WITH ONE VOICE.

Appellant reproduces a statement made during a British Parliamentary debate in its attempt to bolster the argument

that worldwide combined reporting impairs federal uniformity with respect to the taxation of multinational corporations (Supp. Br. at 13-14). Mr. Michael Grylls threatened to cause the House of Commons "to apply a combined world-wide reporting system to United States companies that operate in Britain." This statement is inimical to Appellant's contention that international law precludes a sovereign's right to choose the method by which it will tax its residents.

Appellant attempts to divert attention from Caterpillar's facts by addressing the concerns of *foreign* corporations (Supp. Br. at 13-18). This Court has recognized that additional constitutional protection may be afforded foreign businesses *vis a vis* domestic corporations because the "income [of domestic corporations] is earned under the protection of American laws," *National Paper Co.* v. *Bowers*, 266 U.S. 373, 376, 69 L.Ed. 331, 45 S.Ct. 133 (1924), whereas the "foreign corporations must look to the country of their origin for protection against injury." *Barclay & Co.* v. *Edwards*, 267 U.S. 442, 447 (1924). Even the Solicitor General concedes that the use of combination may require greater constitutional scrutiny when applied to a corporate group with a *foreign* parent (Amicus Brief for U.S. at 18).

The Solicitor General's position that this Court should not "foreclose any claims . . . involving the imposition of the combined reporting method to a group of corporations with a *foreign* parent," (Amicus Brief for U.S. at 19) (emphasis added), is not inconsistent with Caterpillar's request that this Court not deny use of the combined reporting method to a unitary group of corporations with a *domestic* parent. However, the Solicitor General's position, even when viewed narrowly, does violence to previous decisions of this Court which describe the need to speak with one voice.

This Court has held that a state must "express hostility towards those engaged in foreign commerce or practically obstruct its conduct" before commerce clause concerns become salient. *Union Brokerage Co.* v. *Jensen*, 322 U.S. 202, 209, 88 L.Ed.

1227, 64 S.Ct. 967 (1944). Illinois' use of combined apportionment for all taxpayers is clearly not an expression of hostility toward those engaged in foreign commerce. Combination refers to worldwide income merely to ascertain the amount of income earned within the taxing state. In the context of the Caterpillar record there is no interference with foreign commerce. "There is no levy by the [state] on the [foreign income itself], either in form or fact." *Maine* v. *Grand Trunk Ry. Co.*, 142 U.S. 217, 228, 35 L.Ed. 994, 12 S.Ct. 121 (1891).

If combination does attribute foreign income to the state, the taxpayer can obtain relief by establishing a violation of its rights under the Due Process Clause. *Hans Rees' Sons, Inc.* v. *North Carolina*, 283 U.S. 123 (1931). But a fairly apportioned state tax that is not applied selectively to encourage or discourage a particular business does not offend the Commerce Clause. *See, Michelin Tire Corp.* v. *Wages*, 423 U.S. 276, 285, 46 L.Ed.2d 495, 96 S.Ct. 535 (1976); *see also, Clark* v. *Allen*, 331 U.S. 503, 517, 91 L.Ed. 1633, 67 S.Ct. 1431 (1947); *DeCanas* v. *Bica*, 424 U.S. 351, 47 L.Ed.2d 43, 96 S.Ct. 933 (1976).

Appellant's reference to the treaty provisions providing for the designation of "competent authorities" to promote federal uniformity (Supp. Br. at 16) does not change this result. Those provisions pertain exclusively to nations. They have no application to the states. *See*, Model Income Tax Treaty, June 16, (1981).[9]

V. CORPORATE DOMICILE.

Appellant attempts to focus this Court's attention on the foreign parent of a worldwide enterprise and on other facts

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[9] Article 2, Section 1(a) of the Model Income Tax Treaty provides, "1) The existing taxes to which this Convention shall apply are (a) in the United States: *the Federal income taxes imposed by the Internal Revenue Code*. . ."; Article 3, 1(f) provides, "1) For the purposes of this Convention, unless the context otherwise requires. . . (f) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory . . ." (emphasis added).

inapposite to those in the record (Supp. Br. at 19-22). Appellant's long "parade of horribles" is not germane to the determination of Caterpillar's rights.

Appellant makes the circuitous argument that, because the Foreign Commerce Clause precludes combination of multi-corporate groups with foreign parents, the Equal Protection Clause prohibits combination of multi-corporate groups with U.S. parents (Supp. Br. at 18-24). Acceptance of Appellant's argument vitiates domestic combination as well as worldwide combination. Recently enacted Illinois legislation limits combination to the "water's edge"[10] (Supp. Br. at 25). At the federal level, Congress has considered limiting the states' rights to use a combined report only with respect to "foreign corporations" as defined in the proposed legislation. *See*, S. 655, 97th Cong. 1st Sess. (1981); H.R. 1983, 97th Cong. 1st Sess. (1981). Appellant's argument thus proves too much—if no distinction can be drawn between foreign-based and U.S. based corporations (Supp. Br. at 19), the new Illinois law and S. 655 and H.R. 1983, as proposed, would each violate the Equal Protection Clause by mandating different tax methods based on the fortuitous location of the subsidiaries of unitary business groups. Appellant seeks an absolute prohibition of the use of combined apportionment in all contexts.

Appellant also argues that a finding that Illinois can use combination to apportion Caterpillar's income to Illinois will foreclose a later holding that states cannot combine foreign controlled groups, citing *F.S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 64 L.Ed. 989, 40 S.Ct. 560 (1920). In *F. S. Royster Guano Co.*, a state statute that exempted *domestic* corporations doing business solely outside the state from a tax levied on *domestic* corporations doing business within and without the state was struck down as an arbitrary classification in violation of the Equal Protection Clause.

The facts in *F.S. Royster Guano Co.* belie its applicability to the instant case. *F.S. Royster Guano Co.* did not distinguish

[10] Illinois House Bill (H.B.) 2588, 82nd General Assembly (1982).

between *foreign-owned* and *domestic-owned* corporations. A foreign-based corporation derives more protection from the country of its origin than does a domestic-based corporation. *Cf.*, 253 U.S. at 416. A state that taxes foreign-owned entities differently from domestic-owned entities is not imposing an arbitrary distinction in violation of the Equal Protection Clause. *See, Barclay & Co.* v. *Edwards*, 267 U.S. 442 (1924); *Matson Navigation Co.* v. *State Board of Equalization of California*, 297 U.S. 441 (1936).

Appellant's assertion that the Equal Protection Clause precludes worldwide combination is aimed at diverting this Court's attention from the issues presented herein. Denying Illinois the right to combine Caterpillar based on the alleged rights of a foreign-based corporation will undoubtedly create "factual and legal thickets of impenetrable density" (Supp. Br. at 21). The constitution does not require this Court to set broad, irretractable rules based on hypothetical facts. Combined reporting of Caterpillar's income does not violate the equal protection rights of any of the parties to this suit. Appellant's request that this Court engage in guesswork and speculation in addition to determining the specific issue presented herein should be ignored.

VI. THE ISSUE PRESENTED.

The constitutional questions herein (*see*, Appellees' Brief at i) are before this Court solely as they pertain to Caterpillar's fiscal year 1969. Caterpillar Tractor Co. contended at the administrative level that Section 304(e) of the Illinois Income Tax Act, Ill. Rev. Stat. 1979, ch.120 § 3-304(e), authorized its use of combination as a method of apportionment in the years 1970 through 1974. Section 304(e) expressly permits the use of any method of apportionment which fairly reflects a taxpayer's income properly apportionable to Illinois. Caterpillar Tractor Co. also contended that, although it conducted a unitary business in 1969, it was not required to use combined apportionment for the 1969 fiscal period because

separate accounting clearly reflected its income for that short period.[11]

The Hearing Officer representing the Illinois Department of Revenue ("Department") found that Caterpillar was unitary during the five month fiscal period of 1969 and the following five years and also found that combination fairly reflected Caterpillar Tractor Co.'s apportionable income for the short fiscal period in 1969. The Circuit Court adopted the Department's factual findings and partially sustained its contention that Illinois could use combination as a method of apportionment for fiscal year 1969, but solely to determine offsets to Caterpillar Tractor Co.'s pending claim for refund.

Caterpillar Tractor Co. appealed that portion of the Circuit Court's decision requiring the use of combined reporting for fiscal year 1969. The Illinois Appellate Court affirmed the decision of the Circuit Court that Caterpillar Tractor Co. was entitled to use the combined method of apportionment for the years 1970 through 1974. It based its affirmance on its finding that Illinois' membership in the Multistate Tax Compact gave Caterpillar Tractor Co. the option of using the combined apportionment method in accordance with Article III, section 1 and Article IV of the Compact.[12] The Illinois Appellate Court also affirmed the decision of the lower court which permitted Illinois to impose combination for fiscal

[11] Caterpillar's justification for its position was that the Illinois Income Tax Act became effective on August 1, 1969 and had application to only five months of calendar year 1969. Combined apportionment did not fairly apportion Caterpillar's income to Illinois during that five month period because of the application of special phase-in provisions.

[12] Article III, Section 1 of the Multistate Tax Compact provides, in part, as follows:

> "1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party State or pursuant to the laws of subdivisions in two or more party States may elect to apportion and allocate his income in the manner provided by the

(footnote continued on next page)

year 1969. Although Caterpillar Tractor Co. did not appeal the question of the constitutional validity of imposing worldwide combination on Caterpillar in 1969, Chicago Bridge & Iron Company appealed that issue.[13]

Chicago Bridge & Iron Company, in its brief to the Illinois Supreme Court, framed the issues to be decided by that court when it urged:

> "Thus, the Compact specifically recognized that a taxpayer subject to the Illinois income tax might elect to apportion its income in the *manner provided by Articles 2 and 3 of the Illinois Income Tax Act, or in accordance with UDITPA as incorporated in the Compact. Under the terms of the Compact, the election lay solely with the taxpayer, not with the Department of Revenue.* In 1969 plaintiffs elected to apportion under the Act. Since the Department of Revenue was without power to require them to apportion under the Compact, it was without power to require them to utilize combined reporting, assuming that such method was authorized under the Compact. The Department of Revenue could only require such method if it was authorized by the Illinois Income Tax Act. As will be discussed hereinafter, Articles 2 and 3 of that Act [Illinois Income Tax Act] preclude use of combination. However, relying solely on the Multistate Tax Compact,

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(footnote continued from preceding page)

laws of such State or by the laws of such States and subdivisions without reference to this compact, *or may elect to apportion and allocate in accordance with Article IV.* This election for any tax year may be made in all party States or subdivisions thereof or in any one or more of the party States or subdivisions thereof without reference to the election made in the others . . ." (Emphasis added), *reprinted in* 1 State Tax Guide (CCH) ¶ 351.

[13] The Illinois Supreme Court's statement of the case incorrectly infers that the Appellate Court's decision altered the Circuit Court decision with regard to the application of combination to fiscal year 1969.

> the Appellate Court held that the plaintiffs could be required to use combined reporting in 1969, and that it was unnecessary to consider the propriety of such method under the Illinois Income Tax Act.
>
> This erroneous interpretation of the Multistate Tax Compact must be reversed, and intervenors urge this Court also to hold that combination is *neither required nor authorized under the Illinois Income Tax Act....*" (Emphasis and bracketed material added). Appellant's Brief to Illinois Supreme Court at 15-16.

Appellant's arguments to the Illinois Supreme Court consisted of a constitutional challenge to the imposition of combination in 1969 (Appellant's "neither required" argument) and a challenge of the statutory construction of Articles 2 and 3 of the Illinois Income Tax Act (Appellant's "nor authorized" argument). Appellant continues its constitutional challenge of Illinois' right to impose combination on Caterpillar Tractor Co. in its arguments to this Court. But Appellant is unable to satisfactorily explain why Appellees should be denied the benefits of combination for the years 1970 through 1974 (Tr. at 11). Although Appellant argued in the court below that Articles 2 and 3 of the Illinois Income Tax Act mandated separate accounting and thereby precluded Caterpillar Tractor Co.'s use of the "taxpayer option" provision provided in the Multistate Tax Compact, that argument, being a matter of state statutory construction, cannot be made to this Court.

Caterpillar Tractor Co. respectfully submits that the narrow issue for determination by this Court is the constitutionality of Illinois' imposition of combination on Caterpillar for fiscal year 1969. An affirmance or reversal of the Illinois Supreme Court's holding on that issue does not impact upon

the validity of Caterpillar Tractor Co.'s use of combined apportionment for years 1970 through 1974.[14]

[14] In response to the question of whether a reversal herein would preclude Appellees' use of combination, Appellant's counsel answered, "Yes, it would. . ." (Tr. at 11). Appellees respectfully submit this answer is incorrect. Caterpillar Tractor Co.'s elective use of combined apportionment for years 1970 through 1974 creates no constitutional issue.

CONCLUSION

Appellees, Caterpillar Tractor Co. and its four domestic subsidiaries, respectfully request that this Court either affirm the decision of the Illinois Supreme Court or dismiss Appellant's appeal. In the alternative, Appellees request that this Court limit its decision to the issue of whether Illinois may constitutionally impose combination on Appellees for fiscal year 1969.

January, 1983

Respectfully submitted,

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Docket Sheet

No. 81-749-ASX
Status: DECIDED

Title: Chicago Bridge & Iron Company, Appellant
v.
Caterpillar Tractor Co., et al.

Docketed:
August 24, 1981

Court: Supreme Court of Illinois

Counsel for appellant: Sutter, William P.

See also:
81-523

Counsel for appellee: Montgomery, Fred H., Harnack, Don S.

Entry	Date	Note	Proceedings and Orders
1	Aug 24 1981	G	Statement as to jurisdiction filed.
2	Jun 15 1981		Application for an extension of time to docket an appeal and order granting same until 8/24/81 by Stevens, J.
3	Jun 15 1981		June 16, 1981
4	Jun 16 1981		Opposition by Illinois received.
6	Sep 10 1981		Order extending time to file response to jurisdictional statement until October 26, 1981.
8	Sep 16 1981		Order extending time to file response to jurisdictional statement until October 26, 1981.
9	Oct 19 1981		Motion of appellees Caterpillar Tractor Co., et al to affirm filed.
10	Oct 20 1981		Memorandum of appellee State of Illinois filed.
11	Oct 20 1981		Appendix of appellee State of Illinois filed.
12	Oct 21 1981		DISTRIBUTED. November 6, 1981
13	Oct 20 1981	G	Motion of Frank M. Keesling for leave to file a brief as amicus curiae filed.
14	Nov 9 1981		PROBABLE JURISDICTION NOTED. The case is set for oral argument in tandem with No. 80-1745, F. W. Woolworth Co. v. Taxation and Revenue Department of the State of New Mexico and No. 80-2015, ASARCO Inc v. Idaho State Tax Commission. Justice Powell and Justice O'Connor OUT. **********
15	Nov 9 1981		Motion of Frank M. Keesling for leave to file a brief as amicus curiae GRANTED. Justice Powell and Justice O'Connor OUT.
16	Dec 3 1981	D	Motion of appellees for additional time for oral argument filed.
17	Dec 3 1981	G	Motion of appellees for divided argument filed.
18	Dec 14 1981		Motion of appellees for additional time for oral argument DENIED. Justice Powell and Justice O'Connor OUT.
19	Dec 14 1981		Motion of appellees for divided argument GRANTED. Justice Powell and Justice O'Connor OUT.
21	Dec 9 1981		Order extending time to file brief on the merits until January 6, 1982.
22	Dec 31 1981		Brief amicus curiae of Committee on Unitary Tax filed.
23	Jan 5 1982		Brief amicus curiae of Mobil Oil Corp. filed.
24	Jan 5 1982		Brief amicus curiae of Gulf Oil Corp. filed.
25	Jan 5 1982		Brief amicus curiae of Container Corp. of America filed.
26	Jan 5 1982		Brief amicus curiae of Charles A. Legge, et al. filed.
27	Jan 5 1982		Brief amicus curiae of Sony Corp., et al. filed.
28	Jan 6 1982	X	Brief amicus curiae of Financial Executives Inst. filed.
29	Jan 5 1982		Brief amicus curiae of Committee on State Taxation filed.

No. 81-349-ASX

Entry	Date	Note	Proceedings and Orders
30	Jan 6 1982		Brief amicus curiae of Union of Industries/European Community filed.
31	Jan 6 1982		Brief amicus curiae of Allied Lyons P.L.C./et al. filed.
32	Jan 5 1982	D	Motion of Committee on State Taxation of the Council of State Chambers of Commerce for leave to participate in oral argument as amicus curiae and for additional time filed.
33	Jan 7 1982		Brief amicus curiae of Candian Imperial Bank/ et al. filed.
34	Jan 8 1982		Brief amicus curiae of Int'l. Bankers Assn. et al. filed.
35	Jan 6 1982	D	Motion of Multistate Tax Commission for leave to participate in oral argument as amicus curiae filed.
36	Jan 11 1982		Joint appendix filed.
37	Jan 11 1982		Brief of appellant filed.
39	Jan 7 1982		Order extending time to file brief on the merits until February 8/ 1982.
40	Jan 13 1982	D	Motion of appellees to reconsider order denying motion for additional time for oral argument filed.
41	Jan 13 1982		Response of appellees to motion of Committee on State Taxation/ Council of State Chambers of Commerce filed
42	Jan 13 1982		Response of appellees to motion of Multistate Tax Commission filed
43	Jan 14 1982		Brief amicus curiae of United States filed.
44	Jan 18 1982		Motion of Committee on State Taxation of the Council of State DENIED. Justice Stevens and Justice O'Connor OUT.
46	Jan 18 1982		Motion of Multistate Tax Commission for leave to participate in DENIED. Justice Stevens and Justice O'Connor OUT.
47	Jan 18 1982		Motion of appellees to reconsider order denying motion for DENIED. Justice Stevens and Justice O'Connor OUT.
48	Jan 15 1982	G	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
49	Jan 22 1982		Opposition of appellees to motion of the Solicitor General for leave to participate in oral filed.
50	Jan 25 1982		Motion of the Solicitor General for leave to participate in oral GRANTED. Justice Stevens OUT.
51	Jan 25 1982		Order further extending time to file brief on the merits until February 22/ 1982.
52	Feb 3 1982		Brief amicus curiae of State of California filed.
53	Feb 24 1982		Brief amicus curiae of Continental Illinois Natl. Bank/ et al. filed.
54	Feb 25 1982	X	Brief amicus curiae of Multistate Tax Commission et al filed.
55	Feb 25 1982		Brief of appellee State of Illinois filed.
56	Feb 25 1982		Appendix of appellee State of Illinois filed.
57	Mar 1 1982		Record filed.
58	Mar 1 1982		Certified original record on appeal/ 2 volumes received.
60	Mar 24 1982		CIRCULATED.
61	Apr 6 1982	X	Reply brief of appellant filed.
62	Apr 19 1982		ARGUED.
63	May 3 1982		This case is restored to the calendar for reargument.

No. 81-349-ASX

Entry	Date	Note	Proceedings and Orders
			Justice Stevens took no part.
64	May 24 1982	D	Motion of appellees to schedule oral argument in tandem with No. 81-523, Container Corporation of America v. Franchise Tax Board filed.
65	Jun 7 1982		Motion of appellees to schedule oral argument in tandem with No. 81-523, DENIED. Justice Stevens OUT.
66	Dec 9 1982		Supplemental brief of appellant Chicago Bridge & Iron Co. filed.
67	Dec 30 1982		Supplemental brief of appellees Ill. Dept. of Revenue et al. filed.
68	Jan 6 1983		Brief of Caterpillar Tractor Co., et al in reply to appellants supplemental brief filed.
69	Jun 29 1983		DISTRIBUTED. June 29, 1983
71	Jul 6 1983		Appeal DISMISSED for want of a substantial federal question. Justice Stevens OUT.